

Virginia Health Reform Initiative
Agenda: May 26th
Virginia Department of Medical Assistance Services
600 East Broad Street, Richmond, Virginia 23219
Minutes of the Meeting

10:00 - 10:25 a.m. Welcome/Introductions

Dr. Bill Hazel, Secretary of Health and Human Resources

10:25 - 11:00 a.m. Update on VHRI Activities/Overview of Health Benefit Exchange and Our Process – (See powerpoint presentation)

Cindi Jones, Director, Virginia Health Reform Initiative

11:00-12:10p.m. Panel Discussion: Examples of Governance Choices Virginia Could Make

Len Nichols, PhD, Facilitator, George Mason University

Existing/New Governmental Agency: Jackie Cunningham, Commissioner, Bureau of Insurance

- Bureau of Insurance (BOI) is a division within the State Corporation Commission
- Bureau does have a concern that housing the exchange within the bureau would present some conflicts. Bureau's core mission is to protect consumers as they buy products in the state.
- Having to administer and run an exchange, even in its basic format, would be compromising to their core mission.
- If the decision is to house the exchange within the Bureau, it is advisable to insulate the function from other standard practices and functions.
- Background- consumer protection agency that is fully regulatory
 - Governed by 3 commissioners, appointed and serve 6 years
 - State Corporation Commission appoints the Commissioner for the Bureau
 - Framework does not contemplate a structure such as a governing board that would be added to oversee something such as the exchange.
 - What the set up would likely be is an appointed advisory board, and legislation that the General Assembly would consider should specify the membership of the board, down to their level of responsibility and areas of interest.
 - The legislation could address the transparency of the board.
 - Two important distinctions
 - The SCC is not subject to the Freedom of Information Act (FOIA) (does not mean that legislation could not change this).
 - Considered to be a state agency and is subject to state procurement laws. (Legislation could be drafted so as to enable the function from SCC to be exempt)

- SCC commissioners could appoint the exchange director and thus have a new location/office within the SCC. All typical functions would flow through general human resources (HR) processes; however, financing would be different.
- Currently not organized in a manner that would be similar to what is contemplated with the discussions. BOI believes the decisions should be made, to the fullest extent, by VHRI and then included in the legislative process whereby specifics are identified and thus implemented as guided by the legislature.
- BOI believes housing the exchange within their structure is workable; however it is fundamentally different than what happens now.
- BOI will have significant functions within the Health Benefit Exchange, regardless of where the exchange is housed.

QUESTIONS/COMMENTS-

- As you exist today, do you have to ask permission from SCC in order to impose a requirement?
 - No, BOI acts independently from SCC once authority has been granted from legislature.
- What is the National Association of Insurance Commissioners (NAIC) saying and where are they leaning in terms of where Health Benefit Exchanges should be housed?
 - NAIC has developed a guidance model for implementing the exchange. They have also developed white papers. What they haven't done is to make recommendations or take positions.
- Who is going to pay for this? That may generate a better decision as to who and where this is going to run. Is the government ready to absorb this through the appropriations act, assessment on folks who are providing the insurance?
 - The exchange has to be self supporting by 2015. The support could be a myriad of options.
- Page 8 of April 15th whitepaper. "Should Virginia encourage require Active Purchaser vs. Active Market Facilitator."
 - Significant portion of the conversation and must be considered as we run through the process

Quasi-Public Entity: Judson McKellar, Chief Counsel, Virginia Housing Development Authority (VHDA)

- Background
 - VHDA- political subdivision and instrumentality of the state.
 - NOT a state agency.
 - Created by the Code of Virginia and all powers and duties identified through the code.
 - Powers vested in commissioners, 8 individuals appointed by Governor and 3 ex-officio members
 - Membership is staggered in 4 years and can't serve more than 2 consecutive terms
 - Obtains funding for loan program by bonds, both tax exempt and taxable. VHDA's bonds are not debt of the Commonwealth. VHDA does not receive any

appropriations by the General Assembly. Self supporting and paid for by income of the loan lending programs

- They work closely with the Secretary of Commerce and Trade; however, Commerce and Trade does not have authority to direct VHDA.
 - Is subject to FOIA
 - All meetings are open
 - Employees are not state employees. Do not receive any benefits therein.
 - VHDA is not under VITA
 - Exempt from administrative process act; however, there are requirements for public notice and comments
 - Continuity of management is key to success. Very specialized workforce
- How many Full-time Employees (FTE's)?
 - 320
 - Do we know what the FTE's and budgets are for Massachusetts and Utah Health Benefit Exchange Functions?
 - Utah is very small and is currently only an exchange for small businesses, and is a smaller body that reports to secretary; however, they have many sub contractors. Their annual budget is approximately \$600,000.
 - Massachusetts has approximately 45 employees and is small in operation as well because they too sub-contract many functions.

Not-for-Profit Entity: Dr. Sally Cook, Chief Medical Officer, Virginia Health Quality Center

- Background
 - 501c3 founded in 1984
 - Core business is as Virginia's Medicare Quality Improvement Organization (QIO) contract with CMS and authorized under federal legislation through Social Security Act
 - Does have other state and federal contracts
 - Example: Independent Review Organization (IRO)
 - Original board predominately physicians
 - VHQC modified board structure in late 1990s to establish more diversified representation, smaller size, term limits
 - 2002-2005:** Congress commissioned reports on non-profit governance, called for greater transparency and accountability
 - 2005:** AHQA (QIO trade association) published *Standards for Organizational Integrity of Institutional Members*
 - 2007:** CMS published *Guidelines for Contractor Governance and Senior Staff and Governing Body Structure*
 - **Board of Directors:** size, representation, compensation, term limits, conflicts of interest, compliance, ethics and program integrity
 - **Key personnel:** annual performance evaluations, compensation and other factors
 - VHQC board of directors
 - 15 members, limit of two 3-year terms

- Diversity of professional backgrounds
- Multiple consumer representatives
- Racial, ethnic and geographic diversity
- Nominating Committee develops and presents slate; casts wide net
- Annual conflict of interest disclosure, ethics and compliance training
- VHQC website provides information about election, compensation, term limits
- Leadership team manages stakeholder relations, advisory committees
- Administrative Flexibility
 - **Hiring:** Subject to laws and regulations per contracts
 - **Compensation:** Have flexibility within contract requirements
 - **Procurement:** Subject to laws and regulations per contracts; audited by federal government
 - **Open Meetings:** Not applicable as a non-governmental organization

QUESTIONS/COMMENTS

- How do state laws govern procurement?
 - Subject to laws and regulations per contracts. The legislature would create entity and would be able to write in the restrictions of what this governing body would look like.
- What is the funding, annual budget, sources, etc?
 - Funding for QIO comes through CMS (Federal funds) core business
 - HIT and regional extension center is through other federal contracts.
 - State level, the IRO contracts are funded through the individual states that contracts are through. Paid on a per case basis under those contracts.

Discussion/Comments/Questions Regarding the Options

- As “self-sustaining” does that rule out federal contracts or competing for federal contracts?
 - Don’t understand it to be allowable in the existing law. Virginia must fund the Health Benefit Exchange, we cannot depend on federal government or grants to fund operations post 2015. Exchange might seek – and would probably be allowed –to seek federal or other grants for specific purposes (e.g., IT upgrades, other major capital investments that might be deemed necessary from time to time, etc.). But ongoing operational funding must be built into enabling legislation or into the inherent authority of the Board to impose “fees” of some kind.
- Do any of these structures offer efficiencies, cost wise, or would most of them cost the same?
 - It is difficult to answer; in general, question comes down to scope of operation. What is the creature going to be and what functions will it undertake?
 - Cost will probably not be nearly as dependent on **where** it is located but rather on **what** it is.

- There is concern about the restraints of the Administrative Process Act (APA), etc. in needing to move rapidly, quickly, and with direction.
- In Virginia is there a way for the premium tax credits to be offered outside of the exchange?
 - Law and federal government would say “no” at this point.
- Who are the customers? [Question directed at the 3 panel members]
 - SCC- primarily being those seeking exchange policies and small businesses. Also, the state agencies whose interactions will be necessary as well as federal partners for reporting purposes.
 - VHDA- balancing will be significant. If too restrictive then there is no way for appropriate delivery system. Must create an environment where the market is able to function as well as individuals’ ability to access.
 - VHQC- consumers will be those seeking appropriate access to health insurance.
- Could you craft something that started as quasi-governmental and then transitions into something else?
 - If legislature chooses to do this, yes
- When this is put together, we need to be able to create the optimal level of competition.
 - Will be focus of July 15th meeting conversation
- Why did we choose to structure the conversation as we did?
 - Governance is a philosophical choice and therefore is one of the most difficult. If we begin the discussion now, VHRI will be ready to vote in September.
 - Governance is also going to be significant for drafting the legislative authority
 - We don’t have strict guidelines and expectations. The governance structure will be critical in ensuring that whatever guidelines are set, we are able to identify ‘Who are we able to trust? Who will the legislature trust?’
- Between Quasi-Public and Private-Non Profit, what would be biggest road blocks to implement exchange?
 - VHDA “type” would be fairly simple. The larger question is do you want the political temperature to be able to permeate the process. There is danger, if not managed well, of an entity to be “too independent.”
 - VHQC- not specific road blocks but must know the expectation and actual functions in order to ensure appropriate process is in place as well as appropriate staffing. Governance is diversified and other elements, added, as appropriate as the system evolves.
- Functions are discretionary; however there are essential components that we must consider.
 - Governmental – eligibility
- Agility is significant.

- Snail is very flexible; however, you don't see it as a sport team mascot.
- Companies who are flexible and agile must be a player.
- Fear of conflict of interest. When it comes time to recommend who should be on the governing/advisory body, we must be mindful of what the function of the exchange is, the design of such, and ensure there is not significant conflict for both the Commonwealth and the members. Staff will come back with conflict of interest language for governing/advisory body.
- What is failure in the exchange?
 - Failure would be if no one wants to come and play, neither insurers nor customers.

12:10-12:15 p.m. Public Comment Period (first 10 people who sign up, 2 minutes each)

- Public Comment:
 - Virginia Organizing Project- working on health care reform for many years. Have been asking for more consumer representation in VHRI and now within exchange governance. Fully supportive of the Commonwealth Institute and Virginia Poverty Law centers recommendations as to the structure of the Health Benefit Exchange (See Written Public Comments). Noted that in opinion, there is little input in public comment process from direct patient care staff.

12:15-12:45 p.m. Break/Get Lunches (Provided for Advisory Council, Task Force, and staff)

12:45-2:00 p.m. Advisory Council Preliminary Decision Making on Key Governance Issues

Dr. Bill Hazel, Secretary of Health and Human Resources

- Location of the Health Benefit Exchange
Discussion:
 - There was significant dialogue among most members concerning the opinions and reasoning for a specific location or type of location for the Health Benefit Exchange.
 - It was acknowledged that the HBE must be mobile, versatile, flexible, and must have the capacity to move quickly in order to adapt to changes necessary for the success of the HBE.
 - The chair recommended identifying any of the governance options that would not allow Virginia to move in a direction that was desired.

Vote: To eliminate the option: 'New State Agency that could report to the Governor, Secretary of Health and Human Services, or other Secretary'

Motion: Senator Edd Houck

Second: Delegate Chris Jones

Unanimous

Vote: To eliminate the option: 'Existing State Agency, such as DMAS or the State Corporation Commission'

Motion: Scott Burnette

Second: Shirley Gibson

Further Motion: Delegate Chris Jones – to pass by and recall the motion for a vote.

It was decided that there was too much to consider before eliminating the option as a possible solution for where to house the HBE.

Non-Binding Show of Hands: 'Where Should the Governance Structure of the Exchange be Located?

- Significant Majority (10 members)- Quasi Public Entity, similar to VHDA
- Split- (2 members each) 'Existing State Agency, such as DMAS or the State Corporation Commission'/'Not for Profit Private Entity, similar to VHQC

The following were considered in mixed dialogue and ultimately voted on in a block-
Discussion:

- State Administrative Flexibility: Hiring, compensation, procurement, transparency and open meetings
 - The Advisory Council had substantial conversation around the necessity for the HBE governance structure to have flexibility in the hiring, compensation, procurement, and transparency make-up of the HBE.
 - It was noted that in drafting and formulating the exceptional provisions relating to procurement, but specifically the Freedom of Information Act (FOIA), that the Advisory Council should work in collaboration with the FOIA advisory council.
- Governing Board: Size, composition, appointment
- Advisory Committee: Size, composition, appointment
 - The Advisory Council discussed the governing body of the HBE in length. It was duly noted that both could exist within the framework of the HBE Governance Structure. There could be both a Governing Board with a sub-group that serves in an advisory capacity.
 - There was acknowledgement that involvement by the General Assembly, in regard to the appointment of members, would strengthen the possibility of the desired framework being supported and passed by the legislature.

The Council did take a preliminary vote on their preference whether the key governing body should be a Governing Board or Advisory Board. At this time, 7 members voted for the Governing Body, 1 for Advisory Committee, and 4 did not know.

Vote: The following was considered in a block vote-

- The Governance Structure (either Governing Board/Advisory Committee or some mixture) will have flexibility in hiring, compensation, procurement, and will follow some version of FOIA exemptions within a format that is already in existence
- The Executive Director of the Virginia HBE will be hired by the board/committee
- The composition of the board/committee will have diverse representation
- Conflict of interest guidelines will be laid out, in specific format, and further voted on by the Advisory Council
- The appointment of membership to the board/committee will be by both the Governor and the General Assembly
- The size of the board/committee will be a membership of 11-15
- Terms on the board/committee will be staggered terms of 2 years not to exceed 4 consecutive years
- The board/committee should be chaired by the Secretary of Health and Human Resources

Motion: Joe Wilson

Second: Delegate Chris Jones

Unanimous

2:00 p.m. Adjourn

The next meeting will be held 9 a.m. to 2 p.m. July 15, 2011 in Richmond, Virginia

The preparation for the meeting will be similar in format to the meeting today. Advisory Council Members, as well as stakeholders, will receive a white paper and will be asked to provide written comments. The comments will be compiled, mailed out, and will guide the discussion at the July 15 meeting.

Minutes and materials from the meeting can be found by visiting the webpage:

<http://www.hhr.virginia.gov/Initiatives/HealthReform/>